2:Seligman & Seligman E-5 (1909-1910) 1932
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584 had been handed over. When she grew up her father wished to arrange another marriage for her, but was obliged to repay the cow.

586 Mr. Heasty sent the following information concerning the disposal of children after divorce. If the bride-wealth is not returned the children will remain with their father, but if it is returned—and this really constitutes divorce—the husband has to give up the children. The new husband who provides the bride-wealth will take the children and they will become members of his *kwa*. When such lads grow [593] up the true father will often entice them back; this is becoming a common practice, but was formerly confined to members of the *kwareth*.

848 The position of children born out of wedlock shows the same principle as is seen in the treatment of children after divorce, viz. the importance of the bride-wealth in establishing sociological fatherhood, physiological fatherhood having no legal importance. If a girl has one child before marriage the child belongs to the husband who provides the bride-wealth, which would be the same as if she had no child. But if she has two children then her father would keep them, they would be members of his *kwa* and he would accept less bride-wealth. This, however, seldom happens, as girls are usually betrothed as soon as they reach puberty.

●684 The fine for adultery was said to be seven head of cattle—four cows and three bulls—but the number varied, and it may be supposed that the adultery fine would be less than the bride-wealth; three cows and one bull seem a usual fine. Mr. Heasty states that if a girl who is betrothed becomes pregnant by another man the lover will pay seven head of cattle to the father, but the child will belong to her future husband, who has provided the bride-wealth. Unconfessed adultery was said to cause the death of the child.

A fine is paid for seduction, but it seems that many cases that come up for judgment are really those in which a girl betrothed to another man willingly goes to a lover. It must then be decided whether the latter pays a fine or provides bride-wealth and marries the girl.

515 There is no objection to a man marrying two or more sisters, but, unless the second sister is taken in place of the first because the latter has proved barren, full bride-wealth must pass for each.

766 Hofmayr states that if a man of importance dies between the time
582 of betrothal and marriage a ceremony having as its object the provision

583 and by the girl's *gol*. Payment of cattle may extend over many years and, until these payments are completed, the girl lives with her parents and her husband has to visit her there.

The bridewealth cattle go to the girl's *gol* leader, who is either her father, brother or paternal uncle. Pumphrey states that the maternal uncle only receives cattle if there are any arrears outstanding from the marriage of his sister, the girl's mother. Seligman quotes an instance in which 17 cattle were paid by a Dinka and of them 10 went directly to the girl's mother's family.

Marriage Ceremonies

584 If a girl receives a proposal of marriage from a suitor and accepts
585 him, the first step is to obtain the consent of the girl's *gol*. The acceptance of a sheep - the *dyel dhok* - by the girl's parents signifies that they consent to the engagement. According to Pumphrey, the marriage is regarded as valid and binding as soon as this has taken place, and children born to the couple are legitimate even if the cattle payments have not been completed.(1)

A beer-brewing and wedding dance at the bride's village follow and serve to publicise the marriage and express public approval and recognition. After the dance a long period may elapse during which the bridewealth is gradually paid off while the wife lives with her parents. The final ceremony, the *nogho thiek*, marks the separation of the wife from her parents' home and only takes place when all the bridewealth has been paid, or at least the major part of it. Sometimes a mock battle takes place in which the bride is symbolically seized by the groom's party.

There is no set order for the various stages in completing a marriage, for there are often complications, such as seduction or the inability of
[684] the man to pay the cattle and so forth. In cases of seduction the seduction fine has to be paid first and then the full bridewealth.

Divorce

586 If a wife refuses to live with her husband her parents have to return the bridewealth. Deductions are made for the children born of the union at the rate of two head of cattle for every son and five for each daughter. Similarly, if a woman marries another man, before the first suitor has paid all the bridewealth, the cattle which have been paid are given back, subject to the deductions for any children born, because, once the sheep has been accepted, any children of the union belong legally to their father.

587 If the wife dies her *gol* must either substitute an unmarried sister or give back the bridewealth, making deductions for children.

Sexual Offences

684 Fines for adultery are paid to the woman's husband. The amount varies,

(1) Pumphrey, *S.N.R.* Vol.XXIV, 1941, p.26.

but the usual fine for making another man's wife pregnant consists of three cows and one bull; if pregnancy does not result the fine is two head of cattle. Fines for seduction are paid to the girl's father and vary from one to three head of cattle according to whether or not the girl is made pregnant. If a woman has committed adultery, she confesses it at the time of childbirth; her husband then exacts the appropriate fines from the men concerned.

If children have been born outside marriage the eventual husband may take them over and will pay extra bridewealth cattle. Failing this, they are brought up in the *gol* of their maternal uncle and belong to his clan. He will receive the bridewealth paid on the marriage of the girls.(1)

Widow Inheritance

According to Westermann widows are inherited by the brothers of the dead husband or by his sons, who take the wives who are not their own mothers. He then adds that, if children are begotten from these wives, they belong to the family of the dead man and "they are like his own children."(2) This custom of raising up seed to the name of the dead man is general among the Nilotic tribal groups.

KINSHIP AND KINSHIP TERMINOLOGY

Ora

The in-law relationship of *ora* has been commented on by Seligman and Pumphrey. It appears to have two particular applications, being used in a narrow and in a wider sense.

A man describes as *ora* all his wife's kinsmen and, strictly, all the kinsmen of the wives of the men of his own generation belonging to his own clan. This extension may be because he is allowed, at any rate in theory, to have access to the wives of such clansmen and temporarily takes over the in-law relationship with their parents. During the first years of marriage the members of the husband's *gol* have to respect and to avoid the members of the wife's *gol*. Pumphrey suggests that the basic reason for this is that the initial period of marriage is an unstable one and friction is gradually resolved as the bridewealth is paid off and children are born. To avoid friction the husband does not speak to his *ora* and meets them as little as possible.

In a wider sense the *ora* tie is connected with certain sex taboos. The breach of these taboos is believed to cause *dwalo* sickness, a form of illness believed to affect both mother and child who will die unless the man who induced the mother to break the taboo will split a gourd in two and sacrifice a sheep.(3) There are certain *ora* relationships between lineages and one lineage will be *ora* to another. Thus, if men of lineage A have married women of lineage B, C and D, there are *ora* relationships between A and B; A and C; A and D. In such a case no men of lineages B, C and D

(1) Pumphrey, *S.N.R.* 1941, Vol.XXIV, pp.34-5.
(2) Westermann, *The Shilluk People*, 1912, p.114.
(3) Pumphrey, *S.N.R.* 1941, Vol.XXIV, p.29.

even at this stage, complete. The husband has not yet acquired full rights in his wife and does not do so until the cattle payments (*kuny*) are at least substantially complete. It is, however, unlikely that the bride's kinsmen will consent to the *mogho thiek* unless they are satisfied with the payments.

Theoretically, the wife will not take up residence with her husband until these payments have been made in full and in any case not permanently until her first child has been born.[1] The fact that during this transitional stage, when the wife is still living with her family, adultery is regarded as a less serious offence (*kwor kwobo nian ajur*) than later when she is living with her husband (*kwor kwob cie dhano*), indicates that full legal rights in her have not yet passed to her husband. The girl is in fact only betrothed, though, as among the Nuer and Dinka, bethrothal carries with it a degree of legal union and certain rights. Though completion of cattle payments should coincide with change of residence, this is not often the case and frequently a man, tired of waiting and unable to find the final two or three head of cattle, elopes with his betrothed.[2]

Pumphrey also states:

> Thus the marriage tie is complete as soon as the proffered sheep has been accepted, the cattle payments being in the nature of a concomitant transaction. Accordingly children born after the marriage tie is complete are legitimate, irrespective of a possible deficiency in cattle payments. The criterion of legitimacy, a question often in dispute, is not the sufficiency of cattle payments, but the acceptance or otherwise of the proffered sheep.

Ultimately, however, a man's rights in his wife and his children must depend on the payment of cattle. Analysis of disputes over marriage payments show that unless these are sufficient to satisfy permanently the demands of the wife's kinsmen, the union is unlikely to last. This does not mean that the ten head of cattle required are always paid in full, but those owing remain as a debt in the second generation.

Thus it seems safe to assume that the *mogho thiek* should be regarded as the ultimate ceremony which marks not only the change of residence of the bride, but also the final transference of legal rights in her to her husband. In fact this will usually coincide with the payment of at least an acceptable proportion of the bridewealth cattle.

The Distribution of Bridewealth

Pumphrey states that:

> Professor Seligman was at pains to discover how the cattle were divided among the relatives of the wife, and especially what was the share of the maternal uncle. In fact, only in the case already described does he receive anything; i.e. when he claims from the bridewealth of his niece such cattle as are in arrears from the marriage of his sister.[3]

There is here, then, a very definite difference between the system of distribution of bridewealth among the Shilluk and that current among the Nuer and Dinka. Among the latter peoples, even in unions achieved by the transference of very small numbers of cattle, there must always be a definite portion set aside for the maternal kinsmen

[1] A further cow (over and above the ten head of cattle for bridewealth) is expected after the birth of the first child.

[2] This is not the same as the ceremonial and conventional abduction which forms part of the *mogho thiek* ceremonies. Pumphrey says: 'The *mogho thiek* . . . sometimes ends with the "violent" removal of the bride by the kinsmen of the bridegroom', op. cit., p. 28.

[3] Op. cit., pp. 28–29.

586 *Active Divorce*: This is simply known as *tay*: disputes over divorce which are frequently brought before the Courts being known as *goiny tay*.

(*a*) If *A* marries *B* with ten head of cattle (or less) and a divorce is instituted, all cattle should be returned to *A* with the exception of one cow (in the past two) known as *kwor kwob*. The expression *kwor kwob* is used generally in reference to all kinds of sexual offences in which rights in women are violated and, as will be seen later, implies that compensation should be paid. Since the union is terminated and *A* has renounced his rights in his wife, the Shilluk say he must pay something for taking her virginity. It also refers to loss of domestic assistance in the home, for Shilluk sometimes say that this deduction is *kiec mac*, which comes to mean 'compensation for services rendered in the home' and it is not considered necessary if the union is dissolved before the wife takes up residence with her husband. This deduction is still made even if the wife is to blame.

[684]

(*b*) *A* marries *B* and *B* produces children. Should a divorce follow, *A* can only claim return of his cattle after suitable deductions have been made for the children at the rate of five head of cattle for a girl and two for a boy. In such circumstances *kwor kwob* or *kiec mac* would not be paid by the husband, who thus retains legal parenthood of his children. Otherwise, as will be seen later, the children would become *okijo* (illegitimate) and belong to the wife's lineage.

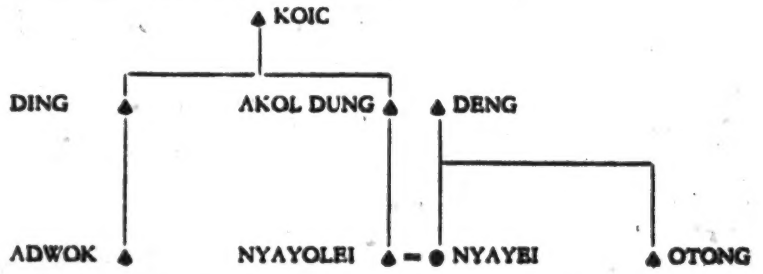
[613] [848]

586 69 Two examples show the way in which such disputes are nowadays dealt with by the Courts.

Kak *wad* Banykwec *v.* Anyang *wad* Dwalo (1949)

[583] Kak married Anyang's daughter Nyabony for ten head of cattle, ten sheep and £Ea.$.100^m/_m$s. in cash. One child was born of the union and, at the time of dispute, was about three years old. Nyabony then eloped with another man and Kak claimed the return of his cattle and other bridewealth. Anyang had already paid everything back with the exception of two cattle which he claimed should stand as legitimization fees for the child. The Court, however, held that the legitimization fees were covered by the offspring of the original cattle which Anyang had not returned to Kak and which Kak was not in fact claiming. No deductions were deemed necessary as *kiec mac* was claimable by Nyabony's family in any case.

Adwok *wad* Deng *v.* Otong *wad* Deng (1949)



[583] Nyayolei (deceased) married Nyayei for eight head of cattle, sixteen sheep and goats, eleven baskets of grain and $.100^m/_m$s. in cash. The marriage took place in *ruth* Padiet's time

8:Howell E-4.8 (1937, 1948) 1953 FJ23 Shilluk FJ23

tant among the Nuer and Dinka, does not usually arise. The Shilluk seem to attach greater significance to physical paternity than do other Nilotes and the *okijo* male will usually be linked to the name of his *gwitor*, even though this carries with it no legal rights. In the case of males there is often a tendency on the part of the maternal uncle or his heirs to deny to the *okijo* rights of inheritance or full participation in the reciprocal privileges of the lineage, so that his status is sometimes precarious and indeterminate.

Unlike the Nuer and Dinka, the Shilluk have no 'Ghost-Marriage'.[1] It is not stated as a fundamental obligation of kinship that a wife should be 'married to the name' of a dead kinsman, though the sentiment which dictates the custom among the Nuer and Dinka is not absent among the Shilluk. In this sense the Nuer and Dinka system is perhaps more individual than that of the Shilluk. Among the Shilluk continuity of the kinship group, not of the individual, is assured by normal legal marriage with cattle which might well have been used by the deceased for this purpose, but are not transferred in his name. Names are retained, however, by a belief in reincarnation. It is believed that the spirit of some ancestor appears in the new-born child which is then named after the ancestor. At the birth of every child a ceremony is performed, usually with the assistance of a *bag reth* who specializes in such matters, to determine this. The participants will ask, '*men akal yi min*?—'This one is brought by whom?' This accounts for the repetition of names in Shilluk genealogies, irrespective of sex, since there is no reason why the spirit of a female ancestor should not enter a male child or vice versa.

As will be seen later, a man who seduces a girl, if she subsequently gives birth to a child, cannot assume legal parenthood of his offspring except by marrying the mother and then only if at least some of the bridewealth cattle have been transferred, and the initial processes of marriage performed before the child is born. Theoretically, at least, children born out of wedlock cannot be legitimized and must therefore remain *okijo*. This does not apply if the father is betrothed to the girl at the time, provided that he eventually completes the marriage payments. It often happens, however, that a child born in these circumstances is adopted by the man who subsequently marries the mother, and marriage in these conditions usually brings with it legal parenthood of children born out of wedlock.

Violation of Rights in Women

Seduction of Unmarried or Betrothed Girls and Adultery

The seduction of unmarried girls is accounted a serious wrong among the Shilluk and one which demands compensation. The wrong is referred to as *kwer kweb nian ajur* and compensation is assessed, both currently and traditionally, at one ox. Pumphrey remarks that,

> . . . an original seduction often eventuates in marriage, in which case the seduction payment is payable first and the marriage payment after (and over and above it). In such cases also marriage dates from the acceptance of the sheep and it is improbable that the girl's family will accept it until the seduction payment is completed.[2]

[1] See Evans-Pritchard: 'Some Aspects of Marriage and the Family among the Nuer', *Zeitschrift für Vergleichende Rechtswissenschaft*, 1938 and Rhodes-Livingstone Inst. 1948.

[2] Pumphrey: unpublished records.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23

This also applies to a girl who (on Pumphrey's definition) is already technically married, but still living in her father's home. The seduction of a girl in this condition (which I prefer to call betrothal) by an outsider is not considered a more serious offence than seduction of a girl who has not been bespoken. In such circumstances, too, the compensation is the recognized right of her father or legal guardian and not of her so-called husband. It is true that the latter will usually be expected to collect the compensation and to take action either directly or through the agency of the Courts, but he will ultimately hand over the ox to the girl's father. Seduction of a girl in these circumstances is not therefore adultery in the legal sense.

Seduction, whether of an unbetrothed or of a betrothed girl, if followed by pregnancy, is considered a more serious offence and demands a higher rate of compensation, which again is claimed as the right of the girl's father. This is known as *kwor yar nian ajur* and is nowadays fixed at three head of cattle.[1] Again, in the case of an unbetrothed girl, her own kinsmen will take action, but if the girl is betrothed, her future bridegroom will take up the matter on behalf of her family.

An act of adultery with a wife (in the full legal sense) demands an indemnity of two head of cattle (*kwor kwoh cie dhano*) payable to her husband.

The impregnation of a married woman (in the full legal sense) is a much more serious offence and the recognized compensation is four head of cattle[2]—*kwor yac cie dhano* or *kwor yac cie et*. The cattle are claimed by the woman's legal husband who will retain them unless there is a divorce, in which case they go to her kinsmen. In fact they would be deducted from the cattle which the wife's kinsmen should return to the husband on divorce and it is unlikely that he would hand them over, especially if they had been paid a long time before.[3]

If a divorce follows the offence the child will normally become *okejo* (unless legitimisation fees are paid) and will be brought up by its mother's kinsmen. Otherwise, children born of adultery belong to the legal husband, even if the wife leaves him to live with her lover.

Adultery with the Wives of Kinsmen

As among other Nilotic tribes, the exaction of compensation usually depends on the relationship between the husband and the woman's lover. Pumphrey says,

> No *kwor* is payable where a man has relations with the wife of his brother or his father. In fact, little resentment is felt in such cases, especially if the offender is unmarried, the realistic view prevailing that it is better so than that he should incur cattle payments by exploits elsewhere.

This statement is substantially correct, though it must be realized that it does not imply that there is anything in the nature of the right of access to each other's wives by close kinsmen.[4] It is forbidden for two (uterine) brothers to cohabit with the

[1] Shilluk say that it was seven head in the time of ruth Kur (1903).

[2] Shilluk say that the number demanded in the past was eight.

[3] Unlike the Nuer and Dinka, there is no limit to the number of times a man may demand compensation for the adultery of his wife. Moreover, if several men are concerned, compensation is demanded in full from each. This does not apply if a child is born, as here only one man can be held responsible, and it is said that the woman will sometimes be prevailed upon to name the richest of her lovers.

[4] As suggested by Hofmayr.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23

same woman and to do so would result in spiritual calamity and actual sickness (*dwalo*) for which ritual expiation would be necessary, even though an indemnity would not be claimed. This spiritual bar does not apply to half-brothers though again no compensation would be expected. Immunity from the payment of compensation for adultery extends also to paternal cousins and agnatic kinsmen farther removed in the kinship structure. The extent is variable—a link four to five generations back may still give immunity—but it appears that common residence in one hamlet or one settlement is a factor of importance. Shilluk say that this theoretical relaxation of the law of adultery is less commonly accepted than in the past and that compensation is more frequently demanded. This may be due to the fact that legal machinery is now available for the settlement of such claims, though presumably public opinion in the matter is expressed in the judgements of the Courts. Moreover, the network of obligations to assist relatives in the payment of compensation of this sort was cast wider in the past. Hence, theoretically at any rate, those who would receive compensation might well be those upon whom lies the obligation to assist in its payment. The two obligations thus cancel each other out.

The following court case illustrates the procedure.

Ajak *wad* Fadiet *v.* Awow *wad* Awingjok (*kwor kwob nian ajur*)

Awow seduced Landeng, daughter of Akiec *wad* Nyaljok. Landeng was at the time betrothed to Ajak, who had paid nine head of cattle and thirty-six sheep. She had not, however, taken up residence with Ajak at the time of the offence and, since no child resulted, only one bull is claimable. The Court awarded Ajak one bull which will be handed over to Landeng's brother, since Ajak himself has no legal claim to it.

Akoc *wad* Agiu *v.* Taytung *wad* Deng (*kwor yac nian ajur*)

Taytung impregnated Nyandongkal (daughter of Bilnyang, brother of Agiu) and she produced a girl-child. She was subsequently married to Ajing Amikwei for a full bridewealth of ten head of cattle. The baby, however, remains with her maternal uncle and is *okijo*. Her maternal uncle has full rights in the child and will receive the bridewealth on her marriage. Neither her mother's husband nor her physical father have any rights in her at all. This case was brought before the Court merely because Taytung had not completed the compensation payment which he was ordered to do. (He had, in fact, only paid two out of the three.)

Onak *wad* Maydong *v.* Dogeng *wad* Ajwin (*kwor yac cie dhano*)

Dogeng seduced Onak's sister Agwer. She was at the time betrothed to one Bul Ayuil, but was living at home. A boy was born to Agwer after she had taken up residence with Bul, by then her legal husband. For this reason, the child (though actually dead) is considered to belong to Bul, though the compensation is claimed by Onak. The case was brought to the Court simply because Dogeng had paid no compensation which he had previously been ordered to pay by instalments. No dispute over legal paternity of the child or over the compensation cattle had arisen. Had the child lived (especially if it had been a girl-child) Onak might have claimed legal rights in it, though the ruling here, as we have seen, is that providing the child was actually born after the woman had taken up residence with her husband it should belong to him. In fact, the child was born a considerable time after Agwer had taken up residence with Bul. Otherwise the case might have been classed as *kwor yac nian ajur* and assessed at only three head of cattle.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23

thiag

One other offence which is recognized by the Shilluk and is also known to Nuer and Dinka is *thiag*. This refers to fornication with a woman who is pregnant or lactating. Should the woman abort the child, or the child die subsequently, four head of cattle are claimed. This applies, of course, only to married women and in effect means that a man must pay four head of cattle for adultery where in other circumstances he would only pay two.

Sexual Offences Concerning Female nyireths

It is a rigid rule among the Shilluk that no female *nyireth*[1] may marry or indeed have sexual relations with any man. It is possible that in the past they were more strictly guarded and deterrents in the form of severe punishment were more rigidly applied. Seligman says,

> . . . the daughters of a king must remain unmarried, the alleged reason for this being that it is unfitting that the daughter of a king should marry a commoner, while she could not marry a *nierd* (king's son) since this would be incest. The prohibition of marriage does not, however, extend to all intercourse; a king's daughter is allowed to select lovers as she chooses, and nothing is said so long as it is not publicly known that she has become pregnant; but if this were discovered she would be killed, as would also the man responsible for her condition. This rule, which until recently appears to have been sternly carried out, led to frequent production of abortion.[2]

This rule is still insisted on by the *reth*, though clearly it is ineffective nowadays since *nyireths* have become something of a problem to the Administration. Writing in 1946, Thomson says that female *nyireths* can be divided into two classes: (*a*) those who cohabit with Police and 'Malakia' (detribalized urban elements) and (*b*) those who live in Shilluk country.

The former class appears to be numerous, and has gained notoriety owing to its pursuing its trade largely in Malakal. I believe it forms a small minority of female *nyireths*. Some of them live faithfully with their unmarried husbands, others are more flighty and others again are prostitutes. As long as these *nyireths* remain in Malakal or Kodok they are merely objectionable on moral grounds.

The latter class is a menace to tribal society. Their habits are similar to the female *nyireths* who consort with 'Malakia', but in this case the 'husband', being of Shilluk blood, feels bound by tribal custom and its distortions. The tribal custom appears to be that the first time a female *nyireth* becomes pregnant the lover has to pay ten head of cattle (*kwor*) to the *reth*. In the old days it was held to be a disgrace for a female *nyireth* to give birth and abortion was frequently practised. The ten head of cattle to the *reth* would not be objectionable, if it could be looked on as bride-price (which it is not). If this were so, the *reth* would have a personal interest in the fidelity of the *nyireth*, as the bride-price would, of course, be returnable on divorce. It would be right that this bride-price should go to the *reth* as being either father of the girl or in *loco parentis*.

This custom has, I think, largely fallen into contempt and I doubt whether the number of cattle reaching Fashoda amounts to very much. This does not mean that the lot of the

[1] *Nyireth*, daughter or son of a *reth*.

[2] Seligman, e.g. 'The Cult of Nyakang and the Divine Kings of the Shilluk'. *Report of the Wellcome Tropical Research Laboratories*, Khartoum, 1911, p. 218.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23

lover is any less hard. In place of a recognised tribal fine or compensation he is now a victim of blackmail. The *nyireth* whom he is living with proceeds as follows 'Give me a cow or I will tell.' This may go on until the lover's capital is exhausted and the *nyireth* with her child or children moves off in search of further prey. The lover has no redress as the whole arrangement is outside tribal custom, and the *nyireth* prospers from her blackmail and promiscuity.[1]

I do not propose to discuss here the reasons for the bar against marriage or sexual intercourse with the daughters of reigning or former *reths*. I have sometimes heard Shilluk say that compensation for illicit intercourse with any woman of the royal clan should really go to the *reth*. There is, however, an obvious distinction between offences committed with daughters of *reths* and with other females of the royal clan. In the first case, all forms of sexual union are barred and any infringement of the rule is a crime against the *reth* himself and all he stands for. Moreover female *nyireths*, not being allowed to marry, are in a sense males. Hence sexual relationship with them by a male amounts to perversity and perversity is not a mere private delict but a spiritual offence likely to react upon society as a whole. Shilluk say that theoretically the *nyireth* and her lover should be put to death, but the offence is now compoundable by payment of a fine. The principles of punishment and expiation are involved, not merely restitution. In the case of all other female *kwareth*, the offence lies not in the fact of sexual relationship, but in an illicit relationship amounting to an infringement of rights which apply to all members of Shilluk society. The wrongdoer pays the indemnity in order to right that wrong. In accepting compensation for offences against other women of the royal clan the *reth* is acting as the recognized head of that clan and has a right to receive and redistribute (which in fact he usually does) the wealth which belongs to the clan collectively. The former is therefore more nearly a criminal or public offence, the sanctions being penal, while the latter is a private delict involving the restitutory sanction only. It is worth noting that a closer study of this subject might well lead to a clearer picture of the spiritual functions of the *reth* himself and through him of the royal clan, and also to a more reliable interpretation of his legal functions.

Conclusion

We may conclude by noting that Shilluk marriages have not the complexity, found both in the social processes and the transfer and distribution of bridewealth, which characterizes unions among their Nuer and Dinka neighbours. The principles are, however, comparable. Marriage is achieved by the performance of ceremonies which have both social and ritual aspects. Side by side with these ceremonies is the payment of bridewealth in cattle, goats, sheep, and sometimes cash. Neither is complete without the other and, generally speaking, each stage in the ceremonies is accompanied by further payments of cattle. The *mogho thiek*, the ultimate ceremony of marriage which corresponds approximately to the Nuer *wut* and the Dinka *thok de thiek*, at any rate in its legal implications, will not be performed unless sufficient cattle have already been paid to satisfy the kinsmen of the bride. Conversely, the payment of cattle would not legalize the union without the accompanying ceremonies.

[1] W. P. G. Thomson: unpublished records, 1946.

17: Pumphrey G-5 (1934-1938) 1941
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177 422 436 Recently, owing to the cultivation of cotton and to the increase in demand for work at Malakal and elsewhere, the value of money has come to be more appreciated. Most of the money so acquired is stored up for the purchase of a bull, very little being spent in shops. [454 556] The purchaser of a bull not unreasonably objects to its going into the maw of the *gol* herd and accordingly deposits it for safe keeping with a distant friend. This innovation, which is no less than the introduction of a system of private ownership of cattle, is calculated to work eventually a deep change in customary law. The growth of cash-[684] mindness has already resulted in cash being sometimes substituted for a bull in cases of payments in compensation for sexual wrongs. No case is known where cash has been accepted instead of one or more of the bride wealth cattle, but this would be logically the next step. [182 583] The effect of a change to cash bride wealth would be large. The present system makes for tribal cohesion and for the administratively convenient system of vicarious responsibility, whereas cash marriage payments would loosen remaining cohesion of the *gol* and render each man responsible for himself. Cattle would cease to become a medium of exchange in marriage contracts and become a commodity. The innumerable goats would cease to eat up the cotton and the products [146] of the Mission gardens and instead themselves be eaten, much to the benefit of the Shilluk physique according to medical opinion. The economic absurdity of the Malakal Hospital contractor being sometimes compelled to import tinned milk by air so as not to forfeit his deposit would be avoided. The possibility of such economic advantages is to be set against the consequent lessening of tribal cohesion.

SUCCESSION.

425 567 There are no definite rules for the inheritance of chattels. Distribution usually takes place before death. If not they will generally be taken by the eldest son, or, in default of sons, by the next-of-kin to the deceased. The inheritance of chattels rarely produces litigation.

428 592 Cattle are taken by the succeeding *gol* leader, who may be a married son or a married brother according to circumstances. In any case the new *gol* leader holds the cattle inherited under the same trust as

182 583 591 her. The inconvenience of this arrangement acts as a spur to the husband to complete the payments as quickly as possible in order to get his wife home to do the cooking.

585 848 Thus a marriage tie is complete as soon as the proffered sheep has been accepted, the cattle payments being in the nature of a concomitant transaction. Accordingly children born after the marriage tie is complete are legitimate, irrespective of a possible deficiency in cattle payments. The criterion of legitimacy, a question often in dispute, is not the sufficiency of the cattle payments but the acceptance or otherwise of the proffered sheep. Incidentally if the wedding dance is proved to have been held this is usually sufficient proof of the acceptance of the sheep, so that the question at issue is usually whether or not the wedding dance was held. Naturally evidence about this, which is a function attended by a large gathering, is usually forthcoming.

585 [684] It is not always so, however, particularly where the marriage under dispute occurred some twenty years previously. In such circumstances if it is proved as a fact that more than four head of cattle have been paid then, since four head of cattle is the maximum payable for seduction, a strong presumption is raised that the union was a true marriage. Analogously a contrary presumption is raised if it appears that not more than one or two head have been paid, a presumption which would be rebutted only by proof that a wedding dance has been held.

586 [848] A marriage in which only a few head of cattle are paid is often dissolved since the woman's *gol* are apt to get tired of waiting and to marry her to another man. In such case the children born of the dissolved marriage are legitimate irrespective of the smallness of the cattle payments and of the fact that the marriage was short-lived. This question will receive a more detailed consideration later.

Customs Surrounding Marriage.

586 [578] Surrounding the elements necessary to the creation of the marriage tie is a mass of traditional procedure which serves to solemnise and make marriage as permanent as may be. Divorce entails a chain of acrimonious litigation not only wearisome to the litigants but likely to cause family disruption.

17: Pumphrey G-5 (1934-1938) 1941
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585 A poor quality animal will be rejected by the *jal tong* of the bride's family who will request the best man to bring a better. In a sense
[182] these intermediaries act as solicitors of the contracting parties, and by their mediation reduce friction which might lead to a breach of the marriage.

The *mogho thiek* is the final ceremony marking the separation of the wife from her own clan, and sometimes ends with a mock battle resulting in the " violent " removal of the bride by the kinsmen of the bridegroom. The bridegroom's party throw spears into the village of the bride and her relations reply with an answering shower, each side keeping the other's spears. After this mock battle the bride goes to
[591] the village of the bridegroom. The remaining two or three head of cattle will soon be brought and the transaction is then complete. The last bull is sometimes known as *wanh thiek*.

The above is a description of a marriage in which no hitch has occurred. Often the sequence of events is entirely different. For
[836] example an original seduction often eventuates in a marriage, in which
●684 case the seduction payment is payable first and the marriage payment after (and over and above) it. In such cases also the marriage dates from the acceptance of the sheep and it is improbable that the girls' family will accept it until the seduction payment is complete. Again some marriages drag on interminably because the bridegroom's *gol* does not produce cattle. In such cases the wife's *gol* sometimes tire
[586] of waiting and end the marriage by marrying her to another, in which case the disappointed husband is entitled to recover any cattle he has paid. At other times, if the husband is acceptable to the woman's *gol* or if, as often happens, they know that the girl is so fond of her lover that all attempts to marry her elsewhere will fail they accept the marriage and content themselves by waiting until a daughter of the marriage is married, when they will claim from her bride wealth the number of cattle remaining in arrears from the bride wealth of her mother.

583 Generally the cattle payments go all to the *gol* leader of the woman, be he her father, brother, or uncle. Professor Seligmann was at pains to discover how the cattle were divided among the relatives of the wife, and especially what was the share of the maternal uncle. In fact

awarded the return of his cattle in full together with the custody of the children. The only cases where divorce may be said to result from an act of the parties is where the cattle have not yet fully been paid and the wife is in consequence still in her own village. In this case if the wife's *gol* despair of the full bride wealth ever being paid they may call off the marriage and marry her to another. In this case the first husband must be repaid the equivalent of the cattle paid by him and this repayment should be made a first charge on the new bride wealth. Deductions will be made here also for children born, for even in such cases the children will go to the husband, provided always that the proffered sheep has been accepted.

If the wife had produced sufficient children to wipe off the whole bride wealth the husband will be entitled to receive nothing upon termination of the marriage, except that as has been said if the marriage has been broken through the wife's bad behaviour the husband may be awarded the return of at least a part.

Until about 1910 upon a breach of marriage the wife's *gol* had to return not only all the identical cattle paid which were still living but also all their living offspring, quite irrespective of their having passed lawfully into the possession of others. Thus divorce produced a string of litigation horrible to imagine. This state of affairs still persists with some of the Dinka of Equatoria Province. It may have the social merit of making divorce even more unpleasant in its consequences for all concerned, but it possesses also many obvious disadvantages which led to the change made by the Resident of the Shilluk in about 1910. Thereafter equivalent cattle were to suffice and offspring born after payment were not reclaimable. This change has been accepted by the Shilluk though there are still cases where reactionary chiefs go by the old rules. The change had the effect of rendering cattle negotiable instruments.

Compensatory Payments in Sexual Offences.

The generic word for cattle payments in respect of sexual offences is *kwor*. *Kwor* is payable to the *gol* of the woman concerned if she is unmarried or still living with her own *gol* and to the husband if she is

17: Pumphrey G-5 (1934-1938) 1941
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684 married and living with him. It varies from four head of cattle to one bull, its different types being :—

Kwor yat cie dhano	— for making pregnant the wife of another	4 head of cattle
Kwor yat nian a fur	— for making pregnant an unmarried girl (or one who, although married, is still living with her own *gol*)	3 head of cattle
Kwor kwobe cie dhano	— for having relations with a married woman without resulting pregnancy	2 head of cattle
Kwor kwobe nian a fur	— for having relations with an unmarried girl without resulting pregnancy (or with one who, although married, is still living with her own *gol*)	1 head of cattle

835 837 Provided the appropriate payment is promptly made these cases produce little ill feeling. No *kwor* is payable where a man has relations with the wife of his brother or of his father (other, of course, than his own mother). In fact little resentment is felt in such cases, especially if the offender is unmarried, the realistic view prevailing that it is better so than that he should incur cattle payments by exploits elsewhere.

684 844 627 Sexual offences are seldom disputed. Those resulting in pregnancy come to light inevitably, for the girl will be questioned and will reply truthfully; nor will a man thus named ever deny. Cases not resulting in pregnancy come to light only when the woman, whether after marriage or before, is giving birth to a child. Shilluk mothers think that their labour is facilitated if they name to the attendent midwife every man with whom they have had relations. News is brought to her family of the names uttered and the woman's *gol* hasten to claim the requisite *kwor* from every man named. Sometimes as many as five bulls are 684 claimed from five separate men, but sometimes when too many paramours are named the girls' *gol* are ashamed and do not claim at all. [548] Although women who go to live in the towns often become prostitutes there is no prostitution in tribal life. [837] [582] Since the marriage age for men is on the average as high as twentyeight extra marital relations are not uncommon.

848 Children born outside marriage may be taken on by the man who eventually marries their mother. If so then he is made to pay extra for them at the rate of five head of cattle for a daughter and two for a [547] son.

19: Howell & Thomson E, G-5 (1943-1944) 1946
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643 [778] We did not witness the selection of the bead. During the *reth*'s stay at Debalo the period of amnesty for adulterers and seducers, which is mentioned by Munro, comes into effect. Adulterers and seducers of unmarried girls are able to avoid the full legal consequences of their [684 sins by paying a small fine in goats and sheep to the *reth*. A few 696] Shilluk took advantage of this, and some thirty sheep and goats were brought in.

During the period of semi-seclusion, apart from the preparation, both parties remained comparatively inactive. After three days all was ready for the final and public phases of the installation ceremonies.

The Installation Ceremonies.

631 643 616 The conventional opposition between the northern and southern divisions, of the country Gol Dhiang and Gol Nyikang, now becomes clearer. The boundary between them is the watercourse called Arepejur, which means "the gathering of the peoples", and which lies about half a mile to the south of Fashoda. Headed by the chief of Gol Nyikang, chiefs, warriors and headmen had been flocking in to Debalo to join forces with the *reth*-elect, and it is their traditional duty to guard him and to support him in his struggles with Nyikang. Nyikang has taken up residence at Adodo a few miles north of Fashoda, and the people who live north of the boundary muster to his aid. The three days semi-seclusion of the *reth* at Debalo and Nyikang at Adodo is thus primarily a period of preparation for the mock battle to come. The march of the *reth* from Debalo and Nyikang from Adodo and their meeting on the high ground above Arepejur symbolizes the ceremonial division of the country into two moieties. The balance between them is strongly emphasized at all points. Nyikang must have his shield borne by a special bearer; so must the *reth*. Certain ritual objects, spears, beads, and the like must accompany the *reth*; others must be carried with Nyikang. Moreover, the joining in battle of the two parties, the capture of the *reth*, and the subsequent rites and ceremonies is an occasion in which all classes and sections of the Shilluk participate, and the formal election and installation of the new

20: Thomson G-5 (1945-1946) 1948 FJ23 Shilluk FJ23

beating the bounds of Shilluk land at Moro, north of Kaka. The details of their progress were similar to that of 1944. 643

The only observed difference between the preliminaries for Nyikang's journey was the embassy to Fanyikang to get *dom* fibre for the ceremonial ropes. This year it was performed by 'Anongo,' one of the uncrowned sons of Nyikang, and not by Dak as in 1944. The embassy this year only went to the *dom* palm forest at Obai Dego, which is 15 miles downstream of Fanyikang.

On 28.12.46 the *reth* was still at Fashoda, and not yet fled to Debalo Kwom. It was expected that he would go before dawn on 29.12.46. Fashoda was full of his personal supporters from the southern Shilluk. I noticed that the *reth* had apparently made friends with the *nyireth* whom he had recently suspected of trying to ambush him.

The *reth* started for Debalo secretly at about 3.00 a.m. on 29.12.46. After resting half way, he entered Debalo, after the village had ceremonially resisted him three times. He stepped over a black sheep, held by Ororo. When he entered, his supporters all broke into one of the songs of Nyikang. This was a mistake, as the whole proceeding should have been secret. The *reth* stayed at the same broken down house as in 1944, and the same royal house was prepared, and left empty.

Jago Yorleiker, the chief of Gol Nyikang, was in charge of the ceremonies. All the fires had been put out before the *reth's* arrival, and preparations had been made to light new fire by the ceremonial method of *pic mac*. This method is later used at Fashoda and is described in our previous article (op. cit. p. 65). A bull was brought by Jago Yorleiker, which was to be speared when the *reth* came out of seclusion to be greeted by the assembled chiefs of Gol Nyikang in the evening. The chiefs of Gol Dhiang had no business in Debalo, and if they came, they would come as observers. Some sheep were brought by self-confessed adulterers. The *reth* insisted that only adulterers whose cases had not previously been opened could avail themselves of this privilege of amnesty, but in the event a few men tried to avoid a judgment debt by paying a sheep. There is some confusion about the ownership of these sheep. It seems clear that they belong to the *reth*, but are presented by him to the chief of Debalo Kwom (himself the chief of Gol Nyikang) as a recognition for his services in sheltering the *reth* in Debalo. In 1944 the chief of Gol Nyikang appropriated the sheep without permission.

That evening the drums of Nyikang were heard from Nyigir, and the *reth's* drums from Debalo. The procession carrying the sacred beads *Ocoro* from Lul arrived at about 8.00 p.m.

29:Dempsey M-5 (1940-1954) 1955
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be telling the truth, and therefore be quite unimpeachable, but he is aware that if the verdict is given in his favour it will be, not so much because of the justice of his claim and his forensic skill in presenting it, but rather because he has promised the judge a bigger 'fee' than his opponent has.

Among the Shilluk the Christian precept of forgiveness of one's enemy does not obtain, but they follow rather the old Jewish principle of retribution for injuries inflicted, and although they will not literally demand 'an eye for an eye and a tooth for a tooth', there is a recognized scale of payment for all such injuries. The penalty for knocking a tooth out is especially severe, the aggressor having to pay the injured party a cow. For an offence against an unmarried girl, her father will claim three cows, and for adultery the fine is four cows. Woe betide the offender who refuses to pay up; he will be wise to keep clear of the district in which the injured party lives, for the relatives of the latter will most surely wreak their vengeance on his person. In the case of homicide, blood payment of ten or more cattle is demanded, quite apart from any penalty that the law may inflict, but sometimes the grief-stricken relatives of the dead person will fulfil quite literally the commandment 'The kinsman of him that was slain shall kill the murderer' (Num. 35: 19), and if perchance he is already in custody and out of their reach will exact vengeance on one of his male relatives. Then the family of the second victim will strive to vindicate their manhood by a raid on the other village and more killings may take place and the feud develop into a minor war, till such time as police can be got to the place and the culprits are arrested.

A grim instance of vendetta occurred in the Lul district a few years ago. A quarrel arose among some youths, tempers rose, a blow was struck and the unlucky recipient died. The aggressor was arrested and sent to Malakal for trial, but a few days later his home was raided and his father murdered as he sat defenceless at his supper. Before police could arrive from Kodok or Malakal, the village of the dead youth was

29:Dempsey M-5 (1940-1954) 1955
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fend for himself during the intervening months, and he spends the time drinking bowls of beer and smoking pipes of rank tobacco with his cronies, discussing the many complexities of women and particularly that formidable mother-in-law of his whom he may never visit, may never even meet, even going to the length of turning aside from her path and averting his head should he chance to see her on the road. He dreams up, too, rosy dreams of his daughter, for it is always a daughter of course, who will be the apple of his eye and the pride of his life during her childhood and who will bring in many heads of fat cattle when she becomes of marriageable age.

On the day of the birth, a custom, of interest to all, but fraught with a certain amount of apprehension and anxiety to some, takes place. Before the mother is given her baby to nurse she must name publicly all her former lovers. Failure to do so, it is averred, will result in the death of the child, and should she refuse to confess she would not be given the baby at all, but it would be reared by a foster-mother. It may be that the girl can say with honesty that she has had no pre-nuptial amours, and that up to the time of her marriage she had preserved her virginity intact. Since the general character of such a girl would be fairly well known in her own village, her word would be accepted and she would be given the child. But if perchance the infant should die, it would be taken as a sign that she had lied. Unfortunately such paragons of virtue among Shilluk maidenhood are rather rare, and the term 'virgin' applied to a nubile girl has something of an unmeaning character, useful only in distinguishing her from her married sisters. Nobody then is in the least shocked or surprised when the girl recites a number of names of men with whom she has been before her marriage.

The men thus accused may either admit the charge or indignantly deny it. If a man admits his transgression he must pay the outraged husband three sheep or goats, or, if he is the father of the child just born, three cows. If he denies the accusation he undergoes a variation of 'trial by

29:Dempsey M-5 (1940-1954) 1955
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ordeal'. He brings a sheep to the village where the girl is; a corner of the animal's ear is cut off and the piece put into a bowl of water and the man, the girl and the baby are sprinkled with the resultant blood and water. If by the following morning the child is still alive the man is adjudged to have lied and must pay compensation as above. If, however, the baby should die during the night, then the girl is held to have accused the man falsely.

During the reign of King Kur, whose despotic methods of government resulted in his being removed from office, a much grimmer and more realistic trial by ordeal was enacted. The man and the girl were brought to a channel of the Nile where a large crocodile habitually dwelt. By some means this brute was called up from the depths and the pair placed equidistant from it were made to swim across the channel, or, if they could not swim, were launched on flimsy rafts. The one that the crocodile seized was deemed to be guilty of lying. It is on record that one youth about to be put to the test in this manner protested thus, 'I know that I am innocent all right, but how does the crocodile know that?'

After the proceedings of the naming and the trying of the lovers is concluded, the mother is allowed to have her child. If it should be a boy, the father, who has been informed of the birth and sex of the child though as yet he is not allowed to see him, sends a present of a miniature harpoon, presumably indicative of his desire that his son should grow up to be a mighty hunter of hippopotami. Then a small basket is woven and filled with ashes of burnt cow dung. One of the baby's maternal uncles hangs the basket round his waist calling upon Nyikang to bless the child and to make him a good husbandman. (The basket containing the ashes represents the large family basket filled with grain.) He then walks round the hut where the baby is, beats upon the wall with the basket and then throws it into the road. If the child is a girl the ashes are mixed with water and the uncle makes models of a bull and a cow. Nyikang's blessing is invoked upon the child that at her marriage she may command a good